

1 UNITED STATES OF AMERICA
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4 KEVIN SCOTT,
5 Plaintiff
6 V Case No. 16-13734
7 TROTT LAW, P.C.,
8 Defendants.
9 _ _ _ _ _ /
10 MOTION HEARING
11 BEFORE CHIEF JUDGE DENISE PAGE HOOD
12 U.S. DISTRICT COURT
13 231 W. LAFAYETTE STREET, COURTROOM 730
14 DETROIT, MICHIGAN
15 WEDNESDAY, APRIL 19, 2017
16 APPEARANCES:
17 FOR THE PLAINTIFF: KEVIN SCOTT, PRO SE
18 29343 FIELDSTONE
19 FARMINGTON HILLS, MI 48334
20 FOR THE DEFENDANT: RICHARD WELKE,
21 TROTT LAW, P.C.
22 31440 NORTHWESTERN HWY.
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1	I N D E X	PAGE
2	MOTION HEARING	3
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
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21		
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1 Wednesday, April 19, 2017

2 Detroit, Michigan

3 At approximately 3:34 p.m.

4 THE CLERK: Calling case number 16-13734,
5 Scott versus Trott. Put your appearances on for the
6 record, please.

7 MR. SCOTT: Kevin Scott.

8 THE COURT: Good afternoon, Mr. Scott. How
9 are you?

10 MR. SCOTT: I'm fine, Ma'am. How are you?

11 THE COURT: Good.

12 MR. WELKE: Richard Welke, Counsel for Trott
13 Law.

14 THE COURT: Thank you.

15 This is the Defendant's Motion for Summary
16 Judgment and I'm ready to proceed.

17 MR. WELKE: Your Honor, there are four
18 motions scheduled today. I have two --

19 THE COURT: Yes, I know there is also a
20 Motion to Quash Subpoena, Second Motion to Compel
21 Discovery and Enforce Order for Sanctions and a Motion
22 to Extend Discovery, but I think the main motion to be
23 heard is the Motion for Summary Judgment.

24 I don't really know that you need argument
25 on the other ones unless you insist, and so I'm prepared

1 to hear the motion for summary judgment.

2 THE COURT: Mr. Scott, you can be seated.
3 Have you had a motion heard before?

4 MR. WELKE: I'm sorry?

5 THE COURT: I'm addressing Mr. Scott to find
6 out whether he has had a motion here before. Have you?

7 MR. SCOTT: Yes, Ma'am.

8 THE COURT: So you know that whoever
9 proposes the motion goes first, you will get to respond
10 and then he'll get to reply, okay.

11 MR. SCOTT: Yes, Ma'am.

12 THE COURT: Very good. Let's go forward.

13 MR. WELKE: As the Court is aware from the
14 pleadings, this is basically Mr. Scott's alleging
15 violations of the Fair Debt Collection Practices Act and
16 he is also alleging that we -- that Trott Law committed
17 fraud and misrepresented the amount of his debt, the
18 verification and other issues.

19 Based on the -- largely based on that
20 particular conduct, Mr. Scott has alleged also state
21 collection violations and intentional infliction of
22 emotional distress. And he also has a 1981 claim.

23 Essentially, this matter involves a mortgage
24 foreclosure by advertisement.

25 On September 20th, Trott Law sent Mr. Scott

1 what is called a Fair Debt Letter which lists the total
2 amount due and also lists certain rights that are
3 required under the Fair Debt Collection Practices Act.
4 One of those is the validation request.

5 They have 30 days to request or to dispute
6 the amount of the debt, and if they notify the
7 collector, then the collector has several options.

8 Mr. Scott did notify, did send a letter, a
9 dispute letter to Trott that was received on or about
10 October 11th.

11 Once that dispute letter was received, under
12 the Fair Debt statute, 1692(g), the collector has two
13 options. He either ceases to any collection activity
14 until the debt is verified or he ceases collection
15 activity altogether.

16 Once we received the dispute letter, we
17 ceased collection and forwarded that dispute letter to
18 our client, which was Bank of America at the time, for
19 verification.

20 Mr. Scott claims that we did not cease
21 collection activity.

22 He claims that the posting of his property
23 and some of the publications occurred after the October
24 11th date. And the October 11th date is the important
25 date that we're concerned with here.

1 The posting and the publication were ordered
2 by Trott Law on or about October 5th and they were
3 ordered to be done by third-party contractors.

4 And they were done.

5 We have cited to a case of Smith versus
6 Transworld, 953 F.2d 1025 in our brief that there is no
7 obligation to verify if collection activity ceases.

8 Now, we have also cited in our brief to
9 approximately six cases that 1692 (g) imposes no
10 obligation to interfere or to cancel with any activities
11 that have been ordered prior to the dispute letter but
12 carried out by third parties.

13 Mr. Scott has not disputed those cases. Mr.
14 Scott has not distinguished those cases. Mr. Scott has
15 not offered any authority for the proposition that
16 collection activities that were ordered prior to the
17 dispute letter and carried out by third parties are
18 violations that can impose liability upon the collector.

19 Essentially, the basis of our summary
20 judgment motion is that this matter can be decided as a
21 matter of law.

22 We ceased collection, we did not initiate
23 any collection activity after the receipt of the dispute
24 letter, and therefore, no liability can incur.

25 Now, we also -- Mr. Scott also claims that

1 we had a duty or we were supposed to or we should have
2 contacted other attorneys with whom it appears that he
3 has been sending his checks or his checks for the loan
4 payment for the last two or three years.

5 Those law firms are Madden, Hauser and Brian
6 Cave. He indicates that we should have verified or we
7 should have checked with them and verified that they had
8 received the payments.

9 Section 1692 (g) imposes no liability or no
10 duty to investigate any of the amount due or anything
11 regarding what the -- what is provided.

12 Furthermore, even if we had called those
13 particular attorneys, it turns out from discovery that
14 those attorneys either sent those checks back to Mr.
15 Scott or they forwarded those checks to the Bank of
16 America who then in turn sent them back to Mr. Scott for
17 one reason or another.

18 The bottom line is that Trott, as a
19 collector, ceased collection activity and did not
20 initiate any act after receipt of that dispute letter
21 and Mr. Scott cannot point to anything that we did after
22 October 11th when we received the dispute letter.

23 With regard to the fraud and
24 misrepresentation of the loan amount, Trott as the
25 collector received the referral from Bank of America.

1 Originally Mr. Scott indicated that Trott initiated this
2 foreclosure on its own, and there was no referral, no
3 Bank of America involved, no lender involved whatsoever
4 and that he claims was fraudulent.

5 It turns out from discovery that Bank of
6 America did refer this matter to Trott Law and we did
7 provide Trott Law with loan figures which we provided on
8 -- which were indicated on the referral, which were
9 indicated on the fair debt letter and which were
10 indicated on the publication.

11 Mr. Scott indicates also that we
12 misrepresented those numbers that we obtained from the
13 lender because they changed. Basically they increased
14 over the 28 days from the referral to the publication.
15 And they increased in the amount of \$729.34. They went
16 from 179,889 to \$180,618. That was the total amount
17 that the lender claimed to be due.

18 What Mr. Scott is missing is the passage of
19 time and five hundred dollars and change of that 700 is
20 per diem interest. The rest of it is loan charges, late
21 fees, et cetera.

22 But Mr. Scott is not challenging the 729, he
23 is not challenging the \$228 that's left after the per
24 diem interest, what Mr. Scott is challenging, he's
25 claiming that he's current. He's claiming that his

1 balance due should be only approximately \$60,000 when
2 the total debt is 180,000. That's a \$120,000
3 difference. That's what Mr. Scott is disputing.

4 What this case is basically about is not
5 really the fair debt issue, what this case is really
6 about is a payment history dispute that Mr. Scott has
7 with his lender.

8 It appears from discovery and from
9 declarations, I think Brian Cave, attorney, did an
10 affidavit of format. As late as February or March of
11 this year, it appears that Mr. Scott is still sending
12 payments to Brian Cave, Brian Cave is returning those
13 payments and Mr. Scott does not understand why he's in
14 default.

15 It is really a payment dispute with his
16 lender. It's a dispute that cannot exist between Trott
17 and Mr. Scott, it has to be with his lender.

18 Basically, the fair debt, the fraud is based
19 on a fair debt and a fair debt is really not -- there is
20 really no liability there because as a matter of law we
21 ceased and the foreclosure sale never occurred and the
22 foreclosure was cancelled.

23 With regard to the balance of accounts, the
24 state claim, the state collection statute that Mr. Scott
25 refers to is also -- it's 339 or MCLA 339.918. That

1 specifically has to do with validation of debts and that
2 mirrors the Fair Debt Collection Practices Act
3 validation provision. That fails for the same reason
4 that the fair debt claim fails.

5 The RESPA claim, the only statute that Mr.
6 Scott cites to in his Complaint and in his pleadings is
7 12 U.S.C. 2605. That is a RESPA statute and that is
8 related to mortgage servicing and qualified written
9 requests.

10 That fails to state a claim right out of the
11 box because Trott is not a mortgage servicer, Trott is a
12 law firm.

13 With regard to the intentional infliction of
14 emotional distress, in my motion I've cited to cases
15 that stand for the proposition that a mortgage
16 foreclosure by advertisement, even if the sale occurred
17 and was finalized, the redemption expired, is not a
18 sufficient basis in Michigan law for intentional
19 inflection of emotional distress.

20 With regard to his 1981 claim, Mr. Scott has
21 not satisfied several of the elements of a 1981 claim.

22 First of all, it's -- let me get to it --
23 there is no factual support for his statement or for his
24 claim that he was treated differently simply because of
25 his race.

1 He was referred to Trott Law for foreclosure
2 because he was in default not because of any other
3 reason.

4 One of the elements of a 1981 claim is that
5 the member of the protected class sought to make or
6 enforce a contract for goods or services that the
7 defendant usually provides.

8 The Defendant in this case is Trott Law. We
9 did not provide Mr. Scott with any services. We had no
10 intention of providing Mr. Scott with any services. We
11 have no duty to Mr. Scott. Our duty is to our client,
12 who is the lender, who initiates the foreclosure, and
13 that element is just simply absent. As well as there is
14 no specific facts as far as any treatment that was
15 different simply because of his race.

16 With regard to -- I realize that it's taking
17 up a little bit of time and there are other motions that
18 may want to be heard, give Mr. Scott a chance, and I
19 thank you very much.

20 THE COURT: Thank you very much.

21 You may respond to the motion for summary
22 judgment, Mr. Scott.

23 MR. SCOTT: Good afternoon.

24 Your Honor, when I received Trott Law's fair
25 debt collection letter, it stated that Trott Law was a

1 debt collector. With that September letter that I
2 received, Trott Law listed a debt in that letter in the
3 amount of \$180,000 -- just a moment, Your Honor. I want
4 to get the correct amount for it.

5 It was about \$180,100 something dollars that
6 they listed in their fair debt letter.

7 When Trott listed my home after that point
8 because, as they said, I had 30 days to respond to the
9 debt that Bank of America said that I owed. The first
10 violation with them was 18 days into the 30 days that I
11 had, Trott listed my home in the newspaper.

12 Now, the letter said, like I said, 180,100
13 and something dollars. They then, 18 days later, they
14 listed my house into the newspaper and it went from
15 180,100 some dollars all the way up to 180,600 and
16 something dollars.

17 With that, all of it was false. We never
18 heard from Bank of America because the last time we were
19 in your courtroom in front of you, Your Honor, you
20 advised Trott Law, you found out that they were going to
21 sell my house the next day on November 8th, 2016, at a
22 foreclosure.

23 As I tried to attempt to call Trott Law to
24 tell them that no payments were missing, Trott Law
25 refused to call me or to talk with me.

1 Once it came up to the last date for me to
2 do something, I had no choice but to file the Chapter 13
3 to stop them because they were all set to sell my home.

4 Trott Law also put in a response because I
5 put in an injunction to try to stop them from selling my
6 home and Trott Law responded with their brief to oppose
7 it. And the entire brief that they submitted they
8 absolutely opposed the Court to stop the foreclosure
9 sale of my home.

10 Again with no choice, I had to file Chapter
11 13.

12 When we came in front of you, Your Honor,
13 and you found out about it, and I told you I just filed
14 that to stop them because they just would not call me o
15 stop. You asked Trott Law to verify the debt. Two
16 weeks later, Trott Law still had not verified the debt,
17 and at that point, Your Honor, I did not know if Bank of
18 America was truly the complainant.

19 I had sent out several subpoenas to two law
20 firms --

21 THE COURT: Was the complainant on what?

22 MR. SCOTT: I beg your pardon, Your Honor?

23 THE COURT: You didn't know whether or not
24 Bank of America was the complainant on what?

25 MR. SCOTT: On Trott Law's ability to

1 foreclose on me. I truly didn't know if they had the
2 authority to foreclose. Did Bank of America hire them,
3 or, as I found out later, sent them a referral to
4 foreclose on me.

5 While we were -- you asked them to verify
6 it, two weeks later he never verified it, and then we
7 were called back in to do scheduling.

8 Once we came back in to do scheduling, Mr.
9 Welke advised me and two court employees that he did not
10 have a complainant.

11 With that also I had sent out several
12 subpoenas to the two law firms that were handling a case
13 that was closed with Bank of America with me or against
14 me.

15 With those subpoenas, I asked them if they
16 had any involvement, did they know anything, did they
17 talk to anyone. I even sent them a letter with the
18 subpoena asking them to contact Trott Law to verify I
19 had given them all of my checks.

20 Their replies came back, Your Honor, saying
21 that they had nothing to do with the foreclosure. They
22 had nothing to do with it. They knew nothing about it.

23 THE COURT: Who had nothing to do with it?

24 MR. SCOTT: Madden, Hauser and then there
25 was Brian Cave, the attorneys from Brian Cave. They

1 also both said they had nothing to do with the
2 foreclosure.

3 So with that, Your Honor, with the attorney
4 telling me he had no complainant, with my subpoenas
5 coming back saying that they had nothing to do with it,
6 the only thing I had left was that Trott Law just
7 basically pulled my name out the air to foreclose on me
8 because the evidence proved that they had no authority
9 to foreclose on me.

10 While we were going through discovery, Trott
11 refused to turn over the referral while we were in
12 discovery. It took the Court three times to order him
13 to turn over the referral; and finally, they turned over
14 the referral.

15 And once we got the referral, then it opened
16 up and allowed us to see a lot more of what's going on.

17 First, when Bank of America did send Trott
18 Law the referral, the payoff amount was on the referral.
19 But if the Court can remember, while we were in front of
20 you the very first time, he insinuated to the Court as
21 if the referral did not have the payment on it because
22 he said he had to go back and verify it. But it was
23 already on there. So he did not have to go back and
24 verify anything because it listed the amount.

25 And as I said earlier, Your Honor, when you

1 look at the listed amount, Bank of America only listed
2 \$179,000 and some change.

3 Trott Law admitted in discovery when I asked
4 them one of my questions did anyone contact you or give
5 you any information and Trott Law advised other than the
6 purser system, no one has given me anything.

7 So that meant that Trott Law went into the
8 purser, pulled up items from a closed case, and in fact,
9 everything that is in his brief citing about missing
10 payments, how much payments were missing, all came from
11 the purser system. Nothing, in fact, has come from Bank
12 of America. Even to this date.

13 Bank of America was never called in
14 discovery, Bank of America never gave any information or
15 any documents at all. Everything came from Trott Law
16 going to the closed case into the referral system and
17 pulling numbers out.

18 So when Trott Law cites the numbers --

19 THE COURT: Is this a closed case in this
20 Court?

21 MR. SCOTT: It was a closed case in this
22 Court, yes, Ma'am. It was against Kevin Scott, Bank of
23 America, and it went all the way up to the Court of
24 Appeals in which my case was denied.

25 So with that, Your Honor, everything he is

1 citing as far as he didn't do anything, he is a debt
2 collector, as a debt collector, there are certain things
3 that a debt collector must do, and one of those is you
4 have to verify the debt.

5 So when Bank of America sent him that
6 referral, Trott Law should have verified that debt with
7 Bank of America or you can wait. So he waited.

8 Once I sent him a certified letter telling
9 him that I owed no money, they still listed my house
10 three more times in the newspaper.

11 Trott Law controlled those listings. Yes,
12 they may have went to them the first time and gave them
13 all four, but Trott Law could have called back the other
14 listings.

15 It is not a third-party listing, Trott Law
16 paid for it and Trott Law could have pulled the other
17 three listings back.

18 Because with that, people were driving up to
19 my home, and as I wrote in one of my briefs was I'm
20 supposed to believe it was a joke that he was not going
21 to sell my house on November 8th? It was all real.

22 And as the Court knows, if you look at his
23 injunction, he opposed everything about stopping the
24 foreclose. He was going to sell my house on the 8th
25 without even talking to me.

1 Again, Your Honor, they never verified the
2 debt.

3 After the first time, once I gave them the
4 letter, they were supposed to call back to Bank of
5 America and verify the debt.

6 We find out later, because I gave Trott
7 letters asking them to contact the attorneys, I asked
8 them to contact the bank. I said they all know that my
9 payments are valid because in the closed case that I had
10 with them, they told the Court that they counted all of
11 my money. And with that, my case should be dismissed
12 because they counted all my money.

13 I objected to it and tried to point out the
14 different things showing that they did not count my
15 money and that they really, as I called it, extorted
16 another \$20,000 from me.

17 That is the basis of my first lawsuit with
18 Bank of America was the fact that they said that I never
19 paid any money for taxes, my 2010 taxes. And they said
20 I was six mortgage payments in arrears.

21 Judge Lawson did an independent study of my
22 payments and he concluded with his evidence that there
23 was no payments missing in 2010 as I said.

24 I also just recently just submitted a brief
25 and I was showing all my payments breaking down the

1 payments, backing down the money in which it clearly
2 shows on both of the briefs, mine and Judge Lawson's,
3 that I included \$19,009 into my regular house note which
4 paid the 2010 taxes.

5 Now, just to let the Court know, I was only
6 late with the 2010 taxes when Bank of America's employee
7 called me up and told me that they paid the taxes for me
8 and I needed to pay them back. I agreed with them and
9 said, okay, I will put the extra money in there.

10 So my very first payment that I gave Bank of
11 America was a thousand dollars in December, December
12 31st, 2015, for a thousand dollars along with my regular
13 house note, which was a separate payment.

14 They never counted the money. It went to
15 something in -- I don't know what they call it, but it
16 went to something else and they never counted it.

17 Then throughout 2011, every month when I
18 gave them a check, just looking at the checks you see my
19 house note is a fixed note at \$2,198.47. Every month
20 basically in 2011 you see checks for 3,000 something
21 dollars; 3,000, 6,000. I was paying the 2010 taxes.

22 Now, once I paid the 2010 taxes, I was done,
23 and then all of a sudden the 2011 taxes came in. So
24 just at that time Bank of America very quickly paid it
25 again. And I called and talked to Michael and said why

1 are you paying this again? He said, don't worry about
2 it, Mr. Scott, we do this sometimes. He said, just go
3 ahead and finish paying like we agreed and it will be
4 fine. So then I just kept paying. You will see that I
5 just kept paying.

6 And then once I paid up the 2011 taxes, it
7 came almost time for 2012. And I said, I see what they
8 are doing, they want to try to keep this escrow account
9 that they told me would just be temporary until I paid
10 my taxes off. I said, I'm going to beat them to the
11 punch.

12 So in February of 2012, I gave them a check
13 for \$8,000; \$2,198 was my regular house note and the
14 other 6,000 was for the 2012 taxes totalled.

15 With that, the next two months I said I'm
16 fine, I can go back to my regular house note.

17 I went back to my regular house note, sent
18 the next two notes in and then they started sending me
19 back my checks saying they didn't want it.

20 Next thing I know, Bank of America
21 foreclosed on me saying I missed six mortgage payments.

22 But while we were in the case and I
23 basically proved that no six mortgage payments were
24 missing, Bank of America then came back and said that I
25 did not pay any more taxes for 2010, '11 and '12.

1 Again unfortunately, even though I did prove
2 it and have it, my case was dismissed with that. But I
3 still fought it all the way to try to show that I had
4 everything. But again, unfortunately, my case was
5 dismissed.

6 Now, with this, if you look at it, Your
7 Honor --

8 THE COURT: Now, what happened to your
9 house?

10 MR. SCOTT: I'm still living in my house,
11 Your Honor.

12 THE COURT: Was it foreclosed?

13 MR. SCOTT: No, because what the last case
14 when Bank of America told me I had to give them
15 \$20,104.29, they said that brought my foreclosure
16 current and the case was closed. But what they did not
17 count was the 19,000 that I included in all of my
18 mortgage payments throughout 2011. They never counted
19 that money.

20 THE COURT: Now, do you still have a
21 mortgage with them?

22 MR. SCOTT: Yes, I do. My mortgage should
23 be finished paid up now in 2019. I have two years left
24 to pay off my mortgage because I did go to a 15-year
25 mortgage.

1 THE COURT: And it is with Bank of America?

2 MR. SCOTT: Yes, it was with Bank of America

3 So Bank of America started the foreclose and
4 then they said I did not pay my takes, and that's what
5 started everything with Bank of America.

6 Now, with Trott, Trott wrote a lot about the
7 last case, but then again, Bank of America was never
8 called in this case. Bank of America never cited
9 anything in this case. So Trott Law is only going by
10 what was in the purser system only. Even with them
11 talking now about the payments, nothing was verified.
12 Because Bank of America was supposed to send me back a
13 notice, as Trott Law even indicated, indicating what
14 payments I did pay them, what payments they are saying
15 were missing.

16 I never received anything from anyone
17 because no one was called and I never received anything.

18 Also, Your Honor, again like I told you, I
19 sent letters to the attorneys telling them to call
20 Trott. I asked Trott to call them.

21 Trott Law advised me that they had no
22 responsibility and they would not be able to contact a
23 third party because that would be also a violation of
24 the FDCPA Act and they wouldn't do it.

25 I asked the attorneys from the two law firms

1 to do it, they wouldn't do it.

2 But while in discovery, once the court
3 ordered Trott to turn over that referral, Trott turned
4 over the referral and then Trott added more to it
5 besides just the referral. And Trott then list the fact
6 that they were actually talking to the two law firms all
7 the time. About my case.

8 So not only were they also violating the
9 FDCPA Act with that to a third party but they were also
10 maintaining this communication and while all along no
11 one would tell me anything and wouldn't tell me
12 anything.

13 Trott also, Ma'am, once they turned over all
14 of that, gave up two different names from Bank of
15 America that said that they were the ones basically I
16 guess started the foreclosure against me.

17 Now Your Honor, if you look at Bank of
18 America says I owe \$179,000 and so much money. Again,
19 my house note is only \$2,198.47. If you take that away,
20 that would mean it goes back to 2010 saying that I
21 haven't given them a payment since 2010 if you add all
22 that money up. And that is just absolutely incorrect.

23 Plus, Bank of America told the District
24 Court and the Sixth Circuit Court of Appeals that they
25 counted all my money and for them to say that that was

1 the reason why my case was dismissed because had Bank of
2 America went back to the Court and said he owes
3 \$179,000, my case would have went to trial for the very
4 first time.

5 So why did Ms. Vitas who told me that she
6 was general counsel for Bank of America come tell me now
7 that she had nothing to do with it and then turn around
8 and Trott Law says, yes, we have been talking to her.

9 So it is almost like, Your Honor, who are we
10 to believe? Did Trott Law actually talk to the two law
11 firms or are those two law firms telling fibs?

12 Right at this point we don't know because we
13 just found out, I just found out at the very last minute
14 who these two people from Bank of America was. And now,
15 the actual conversation basically what happened with
16 Trott Law and the people.

17 In my opinion, Your Honor, I'm asking the
18 Court to not grant their motion because nothing has been
19 verified like you asked them to. They're only going by
20 what they went into the purser and looked up and Trott
21 Law is a debt collector. Because, you are a law firm,
22 too, but every letter that they sent me said we are a
23 debt collector collecting a debt. So you had to follow
24 the rules and regulations of a debt collector and Bank
25 of America cannot hold your hand to do that. You had

1 certain things they had to do and they failed to do
2 that.

3 And with that, Your Honor, me, my wife and
4 family were harmed. I was forced into filing Chapter 13
5 to stop them because I had no choice.

6 If I had waited on the last day to come
7 before this Court, anything could have happened. You
8 could have had a case going, anything could have
9 happened. And the following day on November 8th, my
10 house would have been sold.

11 So I could not take that chance. I filed
12 that Chapter 13 to stop them because I knew it would
13 stop them at that point because they refused to call
14 them, they refused to do anything.

15 And I have been damaged now for the next 10
16 years of our lives. Severely damaged.

17 As far as payments, again, ever since the
18 magistrate ordered me to pay them \$2,888.98 in that last
19 court case, I paid it. I told the magistrate at that
20 point that once I paid that 19,000 and then they forced
21 me to give them another 20,000, I told him I was broke.
22 It is on the records. I told the magistrate, sir, I
23 have no more money except for \$150.00 for me and my
24 family at that point once I gave them the other \$20,000.
25 I was completely broke.

1 And I said it would take me some time to try
2 to get myself back together again. And so it took me
3 three months to get myself back in some type of working
4 area to try to have anything. But everything associated
5 with my family skyrocketed even to this day.
6 Everything. Skyrocketed.

7 This has been very hard on me and my family.
8 I have provided Bank of America all my checks.

9 And another quick point, Your Honor, when I
10 sent my letter to Madden, Hauser, when I sent them my
11 letter and I asked them, I said, please provide me every
12 check that I gave you. They sent back all the copies of
13 my checks but they added on. Instead of just sending me
14 the copies of the checks, they went in and said these
15 first 10 payments we gave right back to you. The second
16 19 payments, we gave to the bank and the bank told us to
17 give it back to you.

18 But in reality, Your Honor, they violated
19 the court order from the magistrate from the first court
20 hearing we had.

21 I was ordered to give my payments to the
22 lawyers and the lawyers were ordered to give my payments
23 to their clients.

24 Well, they never did it, and they gave the
25 checks right back to me. And then Bank of America

1 turned around and started a foreclosure on me.

2 So their attorneys, violating the court
3 order, held my checks, some for over a year, and then
4 they started writing false briefs that was in the
5 district court and said I didn't pay the clients
6 anything. No money whatsoever. And the court relied on
7 what they said.

8 There was one part that the magistrate said
9 he relied heavily basically on what Bank of America said
10 and not what I was saying to him.

11 So I have the lawyers themselves holding my
12 checks.

13 Now, the next 19 checks, as he said, I truly
14 don't know if Bank of America, if they ever gave those
15 checks to Bank of America, I truly don't know. But I do
16 know that their letter actually proved that they
17 violated the court order and never gave the court my
18 checks which then started this second foreclosure by
19 Bank of America saying we never received \$179,000 from
20 you.

21 And I have never missed a payment. They
22 sent back all my checks.

23 Now, as my bank told me, Your Honor, and I
24 think almost all banks have this, any check that is
25 given out, if you don't cash it within a certain amount

1 of time, the check is voided.

2 Well, my bank says six months the check is
3 voided and they would have to be rewritten.

4 Well, Bank of America not only held checks
5 for six months, but they held checks for over a year.
6 And then they went to go try to cash the checks.

7 Now, Chase Bank made a mistake and they told
8 me they made a mistake and cashed them some of them
9 because I had all my money in the account to cover the
10 checks that were valid at that time. And with them
11 holding checks, and I think it amounted to almost 20
12 checks that they tried to turn in at one time. And
13 these are all the checks they said they ever received
14 from me and they turned them in.

15 Your Honor, in my briefs I have cited cases
16 in my brief. I know Mr. Welke said I haven't, but I
17 have. In my brief, I have cited cases. I have cited
18 the rules, and again, Your Honor, I'm just saying that
19 the motion should be denied because there are no missing
20 payments.

21 Bank of America never verified anything.
22 After you ordered them to go verify, it was never
23 verified.

24 Again, all these payments that he is
25 speaking with is just what he received or got out of the

1 purser system by himself. So there has never been
2 really a complainant to finish doing what the FDCPA Act
3 says that they have to do.

4 The other five counts, if you look at
5 everything they did right here, the other five counts
6 are absolutely valid.

7 The fraud, it was plain fraud what they did.
8 They have added -- at first they were going to receive,
9 Trott Law was going to receive \$200.00 extra because
10 that was over what was on the referral. They can't
11 exceed what's on the referral. That is not up to Trott.
12 Trott is just a debt collector. They must collect the
13 debt what Bank of America tells them and Bank of America
14 said \$179,000. Trott added 200 something dollars onto
15 it.

16 Then once Trott listed my house in the
17 paper, they added another 500 which took it up to about
18 700 something dollars. That has nothing to do with
19 fees. It has nothing to do with any of that. They
20 could only collect what Bank of America tells them that
21 was owed and they failed to do that. They added on
22 money and that was fraud what they did and they got
23 caught with it. They were caught.

24 Because it's just the proof is right in
25 their writings that they gave and the items that I have

1 turned in which shows how and why they did that.

2 At this time, Your Honor, I will just stop
3 at this time.

4 THE COURT: Okay. Now, Mr. Scott, you know
5 that insofar as these 19 payments and the 10 payments,
6 those are all part of your prior case. I'm not going to
7 relitigate that, okay. That is not before me.

8 MR. SCOTT: Yes, Ma'am.

9 THE COURT: To the extent that any of that
10 relates to whether or not there is any violation of the
11 Fair Debt Collections Act and whether or not there is
12 fraud in your other claims, I will consider it, but I
13 won't be relitigating what another judge of the court
14 already litigated because that has already been
15 litigated in another court; is that right?

16 MR. SCOTT: Yes, Your Honor.

17 THE COURT: And they didn't determine
18 whether or not you had to make any more payments on this
19 mortgage to Bank of America, right?

20 MR. SCOTT: Say that one more time.

21 THE COURT: At the end of that case was it
22 determined whether or not you had any amount due and
23 owing to Bank of America?

24 MR. SCOTT: No, Your Honor, they said I was
25 paid up and that case was closed.

1 THE COURT: No, I mean do you have any
2 outstanding mortgage payments that you owed after that?

3 MR. SCOTT: No, Ma'am. I gave them a check
4 every single month.

5 THE COURT: The mortgage was paid off?

6 MR. SCOTT: No, monthly payments. I kept
7 giving them their monthly payments.

8 THE COURT: Let me rephrase my question.

9 At the end of the case, did you still owe
10 any monthly payments to Bank of America?

11 MR. SCOTT: Yes.

12 THE COURT: And it was resolved how much
13 that was, right?

14 MR. SCOTT: No.

15 THE COURT: Well, then, why are you making
16 the payments if you don't know how much is owed?

17 MR. SCOTT: Oh, my monthly payment is fixed.

18 THE COURT: Oh, no, what is your overall
19 payment that is due and owing?

20 MR. SCOTT: It's about \$60,000.

21 THE COURT: And was that resolved in that
22 prior case?

23 MR. SCOTT: No.

24 THE COURT: Well then how did you get to
25 that amount?

1 MR. SCOTT: I pulled up -- because I have a
2 fixed payment and fixed interest rate, I pulled up
3 amortization chart and I put in my interest rate which
4 is fixed and put in my payment and it can show you my
5 15-year history where it can go to any month, any date
6 and you will see what I owe left and what I paid. It's
7 a fixed rate.

8 THE COURT: So you know how much is finally
9 due and owing, right?

10 MR. SCOTT: Yes.

11 THE COURT: And so whatever amount you owe,
12 you know that amount now?

13 MR. SCOTT: Yes.

14 THE COURT: And so you don't have any
15 further dispute with Bank of America; is that right?

16 MR. SCOTT: Well, I do --

17 THE COURT: Unresolved by that case.

18 MR. SCOTT: Of that case, no. That is of
19 this case that is my dispute because they tried to come
20 right back and say that I owed 179,000 again.

21 THE COURT: But this case is not against
22 Bank of America, you know that, right?

23 MR. SCOTT: That's correct. Because at
24 first Trott Law said that they -- well, they said they
25 didn't even have a complainant and then once they came

1 up and said that they did have a complainant, but again,
2 Bank of America never verified anything with Trott Law
3 yet. Nothing has been submitted. By Trott. Bank of
4 America was never called. We truly at this point don't
5 know.

6 THE COURT: Don't know what?

7 MR. SCOTT: If Bank of America because Bank
8 of America did not verify the payments as Mr. Welke has
9 indicated that they have because nothing has been turned
10 in.

11 THE COURT: So now what don't you know?

12 MR. SCOTT: I don't know truly how much I
13 owe with Bank of America.

14 THE COURT: You just told me you owe 60,000
15 some dollars.

16 MR. SCOTT: With the amortization, yes, and
17 with me paying all my payments, yes, I do know that.
18 But with Trott Law arguing about payments, they don't
19 know because Bank of America never verified any payments
20 with them.

21 THE COURT: So now tell me this, other than
22 the advertisements in the paper, it is my understanding
23 these advertisements you claim are an effort to collect
24 the debt; is that right?

25 MR. SCOTT: That's correct.

1 THE COURT: And what else do you claim is an
2 effort to collect the debt?

3 MR. SCOTT: When they listed my house four
4 times in the paper after I sent them my certified letter
5 telling them I disputed it. The FDCPA Act says they
6 must cease any type of collection efforts.

7 THE COURT: I understand that. Are you
8 claiming anything else that was an effort to collect the
9 debt?

10 MR. SCOTT: Just when we were last standing
11 in front of you, Your Honor, when I was asking for the
12 injunction where Trott Law basically was wanting to deny
13 my injunction so that they could sell the house or they
14 wanted the money. So it was still going up at that
15 point. They never stopped trying to collect the money
16 because they were going to sell my house if I did not
17 file that Chapter 13.

18 THE COURT: All right. Thank you.

19 MR. WELKE: Brief reply?

20 THE COURT: You may. And start with
21 attempting to sell his house at foreclosure after this.

22 MR. WELKE: I'm sorry, please say that
23 again.

24 THE COURT: Mr. Scott's claim is that -- and
25 I understand your argument relative to the

1 advertisements already placed. I want you to speak to
2 any action you took to continue to foreclose against his
3 house by selling it on November 8th.

4 MR. WELKE: Any action that Trott took to
5 foreclose the house, the first thing we did was receive
6 the referral. The second thing we did was draft the
7 fair debt letter based on the referral and updates from
8 whatever the client indicated. The referral did list
9 the per diem.

10 After the fair debt letter was drafted
11 September 20th, on I believe it was October 5th, we
12 ordered -- arranged for a sheriff's sale and a
13 publication and a posting. The sheriff sale arrangement
14 was what a basically the sheriff department gets a sale
15 date, the publication was to send the publication to the
16 newspaper to publish it and the posting was done by the
17 newspaper. They hired someone to post the property with
18 the publication.

19 That was done -- that was ordered on October
20 5th. The first publication I believe was October 7th.
21 We received the dispute letter on October 11th.

22 The next thing that happened in this case
23 was that we received the complaint, we filed a complaint
24 and a request for TRO and we appeared in court. We
25 forwarded the -- I should say on October 11th when we

1 received the dispute letter, we forwarded that to the
2 client.

3 After that, we did nothing. Trott did
4 nothing. Initiated no new collection activity with
5 regard to this particular foreclosure.

6 Does that answer your question?

7 THE COURT: Did you still have a sheriff's
8 sale set for November 8th?

9 MR. WELKE: The sheriff's sale never took
10 place --

11 THE COURT: That wasn't my question though.
12 Did you still have one set for November 8th?

13 MR. WELKE: Did we still have one set for
14 November 8th? I do believe that it was set for November
15 8th but it never took place.

16 THE COURT: Did you ever cancel it?

17 MR. WELKE: Actually, yes, we did cancel it,
18 but the bankruptcy also cancelled it.

19 We didn't know about the bankruptcy until
20 after I think it was the hearing date in this Court.

21 THE COURT: Okay. Anything else you want to
22 add?

23 MR. WELKE: Yes. When he claims that the
24 debt collector must verify the debt and that's his basis
25 for our fair debt violation, that is not what 1692(g)

1 states. What 1692 states is that until the debt
2 collector obtains verification, the distinction is that
3 the debt collector does not verify the debt, only the
4 lender can verify the debt. There is no way -- we do
5 not have the records, we must depend on the lender to
6 verify the debt. And that is why I indicated in the TRO
7 response that we were waiting for the lender to verify
8 the debt.

9 The fact that Trott never verified it, Trott
10 couldn't verify it. 1692(g) states that the collector
11 obtains the verification and mails it to the consumer.

12 With regard to the 2012 case that Mr. Scott
13 refers to, that case is, the case number is listed in
14 the pleadings here by Mr. Scott and myself I believe and
15 the basic complaint there was a payment history, and I
16 think Mr. Scott accurately stated that Bank of America
17 claimed that he was six payments behind. Mr. Scott
18 filed a complaint and that complaint was dismissed and
19 shortly thereafter Mr. Scott paid \$20,000 to reinstate
20 the loan which I think he indicated just a few minutes
21 ago. And basically his case was dismissed. He lost the
22 case and he had to pay the \$20,000 reinstatement to
23 reinstate the mortgage to avoid the foreclosure.

24 He thinks he won that case, he didn't. He
25 lost that case.

1 With regard to the attorneys, the Madden,
2 Hauser and Brian Cave violating a court order, my
3 understanding in the 2012 case was that Judge Lawson did
4 say that Bank of America is represented by counsel and
5 Mr. Scott should not be talking to them, so Mr. Scott
6 should send his payments to the attorneys who at the
7 time were Madden, Hauser and Brian Cave.

8 The dismissal negated that order. That
9 order was not in effect or that order ceased to be valid
10 after the dismissal.

11 There's nothing in that order that stated or
12 required Mr. Scott to continue making his payments to
13 the attorneys Madden, Hauser or Brian Cave. He
14 continued to do that for now it appears like well over
15 three years.

16 He never missed a payment, he claims. The
17 payments he's made were checks that were written and
18 given to the attorneys that were either returned to him
19 by the attorneys or returned to him by Bank of America.

20 He claims that his balance is 60,000 and he
21 arrived at that based on an amortization schedule. And
22 it is true that you can use an amortization schedule to
23 figure out your balance, but that assumes that you've
24 made the payments.

25 Discovery in our subpoena, our first

1 subpoena, indicates we sent a subpoena to JP Morgan
2 Chase, which is Mr. Scott's bank, who he issues his
3 checks from, and they indicate that -- and that is part
4 of our pleadings in other motions -- they indicate that
5 there has not been a check negotiated to the Bank of
6 America for the last at least 15 months.

7 When I said that he hadn't cited any cases
8 and Mr. Scott said he did cite cases, what I really
9 meant was, and I think I stated it but maybe it wasn't
10 heard correctly, but he did not cite cases that I cited
11 for the proposition that collection activities, the
12 posting and the publication that occurred after the
13 dispute letter and were done by third parties were not
14 debt collection activities that would attribute
15 liability to the collector. That is what I meant by
16 that and that's what I hope came across.

17 His basic claim is that Trott did not
18 validate, and that goes back to 1692. The collector
19 must obtain the verification.

20 Trott does not -- Trott is not the one that
21 validates the debt.

22 THE COURT: I heard that. You've already
23 argued that, you don't have to keep arguing that.

24 MR. WELKE: You got that, all right.

25 THE COURT: Thank you.

1 MR. WELKE: And what I think he means when
2 he says that there is no complainant in this case, I
3 think he means that Bank of America did not hire Trott
4 as the attorney to do the foreclosure. I think that's
5 what he means. I could stand to be corrected. He could
6 also mean what I meant to say was that Bank of America
7 was not in this case and this case from probably about
8 75 percent of what Mr. Scott just ran through, ran by
9 this Court that this Court can see or should be able to
10 see and determine that this is really a payment dispute
11 between Mr. Scott and his lender.

12 THE COURT: No, this case is not a payment
13 dispute case, this case is a complaint by Mr. Scott
14 against Trott Law. It isn't against Bank of America.

15 MR. WELKE: I understand, but his dispute is
16 really against the lender and it is in the form of a
17 payment dispute.

18 THE COURT: Anything else you want to add?

19 MR. WELKE: No, thank you very much.

20 THE COURT: I've heard your arguments and I
21 was going to rule today but I think I want to add a few
22 things into my ruling, and at that time I will rule on
23 the other documents as well.

24 MR. WELKE: Very well.

25 THE COURT: Thank you very much for your

1 arguments.

2 (Proceedings concluded at 4:37 p.m.)

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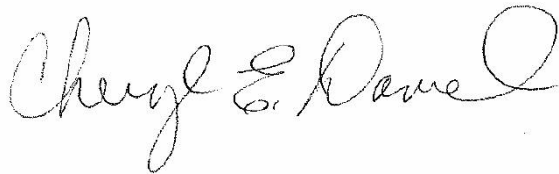
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C E R T I F I C A T I O N

I, CHERYL E. DANIEL, Official Federal Court Reporter, after being first duly sworn, say that I stenographically reported the foregoing proceedings held on the day, date, time and place indicated. That I caused those stenotype notes to be translated through Computer Assisted Transcription and that these pages constitute a true, full and complete transcription of those stenotype notes to the best of my knowledge and belief.

I further certify that I am not of counsel nor have any interest in the foregoing proceedings.

A handwritten signature in cursive script, reading "Cheryl E. Daniel". The signature is written in dark ink and is positioned above the printed name and title.

CHERYL E. DANIEL,

FEDERAL OFFICIAL COURT REPORTER

DATED: March 1, 2018

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